

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

CLAIMANT: Michael E. Bassel

CASE 41H-1178-R-2022

41H 136657-00

41H 136697-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claims 41H 136657-00 and 41H 136697-00 are rights owned by Michael Bassel. The claims appeared in the Preliminary Decree for Basin 41H with DNRC issue remarks and were consolidated into Water Court Case 41H-1178-R-2022.

FINDINGS OF FACT

1. Claim 41H 136657-00 received the following DNRC issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE CLAIMED PLACE OF USE AND ACRES IRRIGATED MAY BE QUESTIONABLE. REVIEW OF THE AVAILABLE DATA APPEARS TO INDICATE 18.00 ACRES IRRIGATED.

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

2. On December 9, 2022, DNRC Water Resource Specialist Kara Huyser filed a Memorandum including her review of the issue remarks. Ms. Huyser indicated that Claimant contacted her and agreed with her resolution of issue remarks.

3. Ms. Huyser indicated that in her review of the aerial photos and maps, the place of use should be reduced to 18 acres as follows:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	2.00		NWSENE	6	1S	6E	GALLATIN
2	16.00		NWNE	6	1S	6E	GALLATIN
Total:	18.00						

4. Ms. Huyser stated the volume and flow rate remarks are also resolved.
5. The remaining issue remarks are notice type and given that no objections were filed to these claims, they can be removed.
6. The information provided resolves all issue remarks in this case.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the

evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkhardtmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master’s Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as “a relatively modest standard that the statutory criteria are ‘more probable than not’ to have been met.” *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

4. The evidence entered into the record is sufficient to resolve the issue remarks on this claim and support making the corrections outlined above.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct the Preliminary Decree for this Basin.

Post Decree Abstracts of Water Right Claims are served with this Report to confirm the recommended corrections have been made in the state’s centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Michael E. Bassel
1415 Caribou Way
Alpharetta, GA 30005-3637

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 136657-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MICHAEL E BASSEL
1415 CARIBOU WAY
ALPHARETTA, GA 30005 3637

Priority Date: DECEMBER 31, 1889

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 336.60 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 30.00

Source Name: BOSTWICK CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSENE	6	1S	6E	GALLATIN

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: STIMPSON DITCH

Period of Use: MAY 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.00		NWSENE	6	1S	6E	GALLATIN
2	16.00		NWNE	6	1S	6E	GALLATIN
Total:	18.00						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

136657-00

136697-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 136697-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MICHAEL E BASSEL
1415 CARIBOU WAY
ALPHARETTA, GA 30005 3637

Priority Date: DECEMBER 31, 1889

Type of Historical Right: DECREED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: BOSTWICK CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSENE	6	1S	6E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DITCH

Ditch Name: STIMPSON DITCH

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SENE	6	1S	6E	GALLATIN
2			NWNE	6	1S	6E	GALLATIN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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